UNITED STATES PATENT AND TRADEMARK OFFICE

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10/698,812	10/30/2003	Michele Covell	200313228-1	2456

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EXAMINER
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ART UNIT	PAPER NUMBER
2152	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>26 February 2008</u>.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-44</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-44</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11/26/07, 04/13/07</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

1.   This office action is in response to communication filed on 02/26/2008.

2.   Claims 1-44 are pending and presented for examination.

Response to Arguments

3.   Applicant's arguments have been fully considered but they are not persuasive.

35 USC § 102 rejection

4.   Applicant argues on page 18 of the Remarks that the prior art does not teach

"selecting a service provider from a plurality of service providers based no static service

provider information and static network information." The examiner respectfully

traverses. Applicant seems to argue that a content provider of Menditto is not a service

provider. But given broadest reasonable interpretation to "service," a service could

cover content. Also, there is nothing in the claims that defines a service provider

different from a content provider of Menditto. Therefore, it is maintained that the prior art

does teach "selecting a service provider from a plurality of service providers based on

static service provider information and static network information" (Menditto, fig. 2, col. 3

lines 11-16 and 51-61, selecting a best content provider server that will deliver content

data to the client the fastest (static network information) with required security

protection, close proximity, and availability of server's computing resource (static

service provider information)).

35 USC § 103 rejection

5.   Applicant argues that the prior art Menditto-Bochmann does not teach ""selecting

a service provider from a plurality of service providers based no static service provider

information and static network information, wherein said selecting a service provider is

performed by said service location manager." In response to applicant's arguments

against the references individually, one cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800

F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Menditto alone does teach

"selecting a service provider from a plurality of service providers based no static service

provider information and static network information" as discussed above, and also

"wherein said selecting a service provider is performed by said service location

manager" (Menditto, col. 3 lines 11-28, content gateway is read as the claimed service

location manager, which selects a content provider for satisfying a content request).

6.   Applicant argues that Bochmann's QoS-broker is a <u>human</u>. However, applicant

fails to show factual proof that Bochmann discloses QoS-broker as a human. In fact, a

QoS-broker in Bochmann is a server, not a human (Bochmann, section 4, first par.) And

this QoS-broker is completely analogous to Menditto's content gateway in its function of

selecting best provider for a request.

Response to Amendment

7.   The objection of claims 2, 3, 4, 15, 25, 35 on the preamble has been withdrawn.

8.   Further objections of claim 2 have been withdrawn due to the amendment.

9.   The 35 U.S.C 101 rejection has been withdrawn due to the amendment.

Claim Rejections - 35 USC § 102

10.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

11.   Claims 1-4, 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by

Menditto et al. (US 6,981,029, hereafter Menditto).

12.   For claim 1, Menditto discloses a method of selecting a media service provider

based on static resource information, said method comprising:

- identifying a type of service to be performed on an item of content before a
  service result is provided to a client device, wherein said item of content is
  identified during a session between a client device and a service location
  manager (col. 12, lines 23-27, a JPEG image request that requires additional
  processing in a session between a user and a web page, e.g. lfm.com, col. 3
  lines 11-16, content gateway intercepts the request and classify the request,
  classifying HTTP requests at the content gateway according to QoS service
  (using Differentiated Service or type of service byte in the request, fig. 9, class

type) that the request is qualified for (col. 14 lines 49-58, table 1, 2, appendix A, QoS classes), before connecting to the appropriate service provider that satisfies the QoS class);

- selecting a service provider from a plurality of service providers based on static service provider information and static network information, wherein said selecting of a service provider is performed by said service location manager (col. 3 lines 11-28, content gateway is read as the claimed service location manager, which selects a content provider for satisfying a content request) said selecting of a service provider further based on service session information if said service session information has been received (fig. 2, col. 3 lines 11-16 and 51-61, selecting a best server that will deliver content data to the client the fastest with required security protection, close proximity, and availability of server's computing resource, col. 12, lines 23-27, additional processing); and

- providing information for transferring said session to said service provider, wherein said service provider performs said type of service on said item of content (col. 13, col. 14 lines 49-58, requests with a certain QoS (quality of service, e.g. bandwidth, quality of media…) requirement is processed and service is provided to the user accordingly).

13.   For claim 2, Menditto discloses a system for providing content to a client device, said system comprising:

- a service location manager that selects a service provider that is capable of performing a type of service on an item of content from among a plurality of service providers based on static service provider information and static network information (fig. 2, col. 3 lines 11-16 and 51-61, content gateway selecting a best server that will deliver content data to the client the fastest with required security protection, close proximity, and availability of server's computing resource);

- said item of content and type of service to be performed on said item of content are identified during a session between said client device and said service location manager, wherein said type of service is identified before a service result is provided to said client device (col. 3 lines 11-16, content gateway intercepts the request and classify the request, classifying HTTP requests at the content gateway according to QoS service (using Differentiated Service or type of service byte in the request, fig. 9, class type) that the request is qualified for (col. 14 lines 49-58, table 1, 2, appendix A, QoS classes), before connecting to the appropriate service provider that satisfies the QoS class)

- said service location manager further selecting said service provider based on service session information if said service session information has been received (col. 13, col. 14 lines 49-58, requests with a certain QoS (quality of service, e.g. bandwidth, quality of media...) requirement is processed and service is provided to the user accordingly).

14.   For claims 3 and 4, the claims are rejected for the same rationale in claim 1.

15.   For claim 15, the claim is rejected for the same rationale in claim 2.

16.   For claims 16, Menditto further discloses said static service provider and network

information is accessible by a service location manager (Menditto, col. 3 lines 51-61).

17.   For claim 17, Menditto further discloses said static service provider and network

information comprises information concerning computational and memory resources,

connectivity and expected bandwidth and latency between servers (col.3 line 60, which

server is most heavily loaded, meaning available computational and memory resources

and bandwidth are considered, col. 2 lines 64-66, best response time or best latency),

client and content addresses (col. 6 lines 25-30), session dispatch history (col. 4 lines

32-34, requests for components of a same web page belong to a same session),

network proximity (col. 3, lines 11-16) and the identity of special purpose hardware (fig.

2, hardware such as content gateway, CDN, and content servers have corresponding IP

addresses).

Claim Rejections - 35 USC § 103

18.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

19.   Claims 5-14 and 18-44 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Menditto, as applied to claims 15, 17 above, in view of Bochmann et

al. (Quality of service management issues in electronic commerce applications,

hereafter Bochmann).

20.   For claim 5, Menditto discloses method of selecting a media service provider for

media based on static resource information, said method comprising:

- identifying a type of service to be performed on an item of content before a

   service result is provided to a client device, wherein said item of streaming

   content is identified during a session between said client device and a service

   location manager (col. 12, lines 23-27, a JPEG image request that requires

   additional processing in a session between a user and a web page, e.g. lfm.com,

   col. 3 lines 11-16, content gateway intercepts the request and classify the

   request, classifying HTTP requests at the content gateway according to QoS

   service (using Differentiated Service or type of service byte in the request, fig. 9,

   class type) that the request is qualified for (col. 14 lines 49-58, table 1, 2,

   appendix A, QoS classes), before connecting to the appropriate service provider

   that satisfies the QoS class);

- selecting a service provider from a plurality of service providers based on static

   service provider information and static network information, said selecting of a

   service provider further based on service session information if said service

   session information has been received (fig. 2, col. 3 lines 11-16 and 51-61,

   selecting a best server that will deliver content data to the client the fastest with

   required security protection, close proximity, and availability of server's

computing resource, col. 12, lines 23-27, additional processing), wherein said

selecting of a service provider is performed by said service location manager

(col. 3 lines 11-28, content gateway is read as the claimed service location

manager, which selects a content provider for satisfying a content request); and

- providing information for transferring said session to said service provider,

  wherein said type of service provider performs said service on said item of

  content (col. 13, col. 14 lines 49-58, requests with a certain QoS (quality of

  service, e.g. bandwidth, quality of media...) requirement is processed and

  service is provided to the user accordingly).

Menditto does not explicitly discloses that the media is a streaming media.

However, Bochmann discloses the media is a streaming media (section 1-

introduction, section 4, selection of server from a pool of servers for multimedia

sessions such as video-on-demand using a QoS-broker)

Therefore, it would have been obvious for one skilled in the art at the time of the

invention to combine the teachings of Menditto and Bochmann in order to provide a

multimedia QoS management scheme in order to optimize the overall cost-performance

of the system and the users satisfaction (Bochmann, section 1-introduction)

21.   For claims 25 and 35, the claims are rejected for the same rationale in claim 5.

22.   For claims 6, 26 and 36, Menditto-Bochmann discloses the invention

substantially as in claims 5, 25 and 35. Menditto-Bochmann further discloses said static

service provider and network information is accessible by a service location manager

(Menditto, col. 3 lines 51-61).

23.   For claims 7, 27 and 37, Menditto-Bochmann discloses the invention

substantially as in claims 5, 25 and 25. Menditto further discloses said static service

provider and network information comprises information concerning computational and

memory resources, connectivity and expected bandwidth and latency between servers

(Menditto, col.3 line 60, which server is most heavily loaded, meaning available

computational and memory resources and bandwidth are considered, col. 2 lines 64-66,

best response time or best latency), client and content addresses (Menditto, col. 6 lines

25-30), session dispatch history (Menditto, col. 4 lines 32-34, requests for components

of a same web page belong to a same session), network proximity (Menditto, col. 3,

lines 11-16) and the identity of special purpose hardware (Menditto, fig. 2, hardware

such as content gateway, CDN, and content servers have corresponding IP addresses).

24.   For claims 8 and 28, Menditto-Bochmann discloses the invention substantially as

in claims 5 and 25. Menditto-Bochmann further discloses said special purpose hardware

comprises encryption and compression hardware (Bochmann, table 1, encryption, table

3, multimedia compression).

25.   For claims 9 and 29, Menditto-Bochmann discloses the invention substantially as

in claims 5 and 25. Menditto-Bochmann further discloses said service session

information comprises service session initiation and termination information (Bochmann,

section 4.1, status of the network connection between the client and the server).

26.   For claims 10 and 30, Menditto-Bochmann discloses the invention substantially

as in claims 9 and 29. Menditto-Bochmann further discloses said initiation and

termination information provides information regarding the computational resources

used in previous sessions (Bochmann, section 4.1, lines 7-8, information regarding the

computational resources is pushed or requested to the QoS-broker).

27.   For claims 11 and 31, Menditto-Bochmann discloses the invention substantially

as in claims 6 and 27. Menditto-Bochmann further discloses said session dispatch

history comprises information concerning content length (Bochmann, section 4.1 line 4-

5, size of the requested files or content length).

28.   For claims 12 and 32, Menditto-Bochmann discloses the invention substantially

as in claims 5 and 29. Menditto-Bochmann further discloses said streaming content is

serviced and delivered to a client device as it is received (Bochmann, table 1,

encryption, streaming content that does not require encryption may be delivered as is).

29.   For claims 13 and 33, Menditto-Bochmann discloses the invention substantially

as in claims 12 and 32. Menditto-Bochmann further discloses non streamed content is

generated from said streaming content by said service provider (Bochmann, table 1,

encryption, non streamed content is just streaming content that was encrypted since

non stream content may not be played until being decrypted).

30.   For claims 14 and 34, Menditto-Bochmann discloses the invention substantially

as in claims 13 and 29. Menditto-Bochmann further discloses said streaming content is

serviced by said service provider and delivered to a client device as a non streamed file

(Bochmann, table 1, encryption, non streamed content is just streaming content that

was encrypted to be delivered to the user, non stream content may not be played until

being decrypted).

31.   For claims 18 and 38, the claims are rejected for the same rationale as in claim

8.

32.   For claims 19 and 39, the claims are rejected for the same rationale as in claim

9.

33.   For claims 20 and 40, the claims are rejected for the same rationale as in claim

10.

34.   For claims 21 and 41, the claims are rejected for the same rationale as in claim

11.

35.   For claims 22 and 42, the claims are rejected for the same rationale as in claim

12.

36.   For claims 23 and 43, the claims are rejected for the same rationale as in claim

13.

37.   For claims 24 and 44, the claims are rejected for the same rationale as in claim

14.

Conclusion

38.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

39.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Hieu T. Hoang whose telephone number is 571-270-

1253. The examiner can normally be reached on Monday-Thursday, 8 a.m.-5 p.m.,

EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HH

/Bunjob Jaroenchonwanit/
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